

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7643
WWW.SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
TELEPHONE (212) 973-0111
FACSIMILE (212) 891-9598

JOSHUA M. BOBECK
TELEPHONE: (202) 295-8410
FACSIMILE: (202) 424-7643
JMBOBECK@SWIDLAW.COM

July 14, 2004

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: **Notice of Ex Parte Meeting CC Docket Nos. 01-338, 96-98, 98-147**

Dear Ms. Dortch:

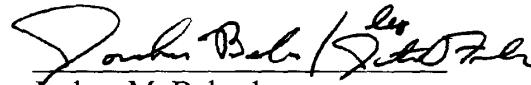
Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on July 13, 2004, Patricia M. Hogue, Senior Vice President of El Paso Networks, L.P. ("El Paso") and the undersigned met with Jeremy Miller, Russell Hanser, Marcus Maher, Ian Dillner and Nazar Khodorovsky of the Competition Policy Division of the Wireline Competition Bureau to discuss regulatory issues relating to the above-referenced dockets. Consistent with the Commission's rules, El Paso is electronically filing this notice with the Office of the Secretary and attaching a copy of the presentation distributed during the meeting.

In addition to discussing the attached slides, El Paso noted that by using unbundled dark fiber and investing in innovative optronic equipment to "light" that fiber, El Paso was living up to the promise of facilities based competition embodied in the unbundling provisions of the 1996 Act. By using dark fiber UNEs, El Paso provides competitive and innovative new services to its customers while making use of hard to duplicate ILEC transmission facilities that would otherwise remain dormant, without unnecessarily digging up public streets.

El Paso noted that it continues to be impaired without unbundled access to dark fiber and that such unbundling remains warranted under the Act and under *USTA II*. In particular El Paso discussed issues surrounding the Commission's impairment analysis in light of *USTA II* and how a revised impairment analysis should be applied to dark fiber. El Paso noted that evidence accumulated during the TRO transport hearing in Texas demonstrated that by any objective measure El Paso remained impaired without access to dark fiber.

Marlene H. Dortch
June 29, 2004
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Sincerely,



Joshua M. Bobeck

Counsel for El Paso Networks, L.P.

Enclosure

cc: Jeremy Miller
Russell Hanser
Ian Dillner
Marcus Maher

Patricia M. Hogue (w/o attachment)

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**Connecting Information,
People, and Ideas**

July 13, 2004

EPN Story

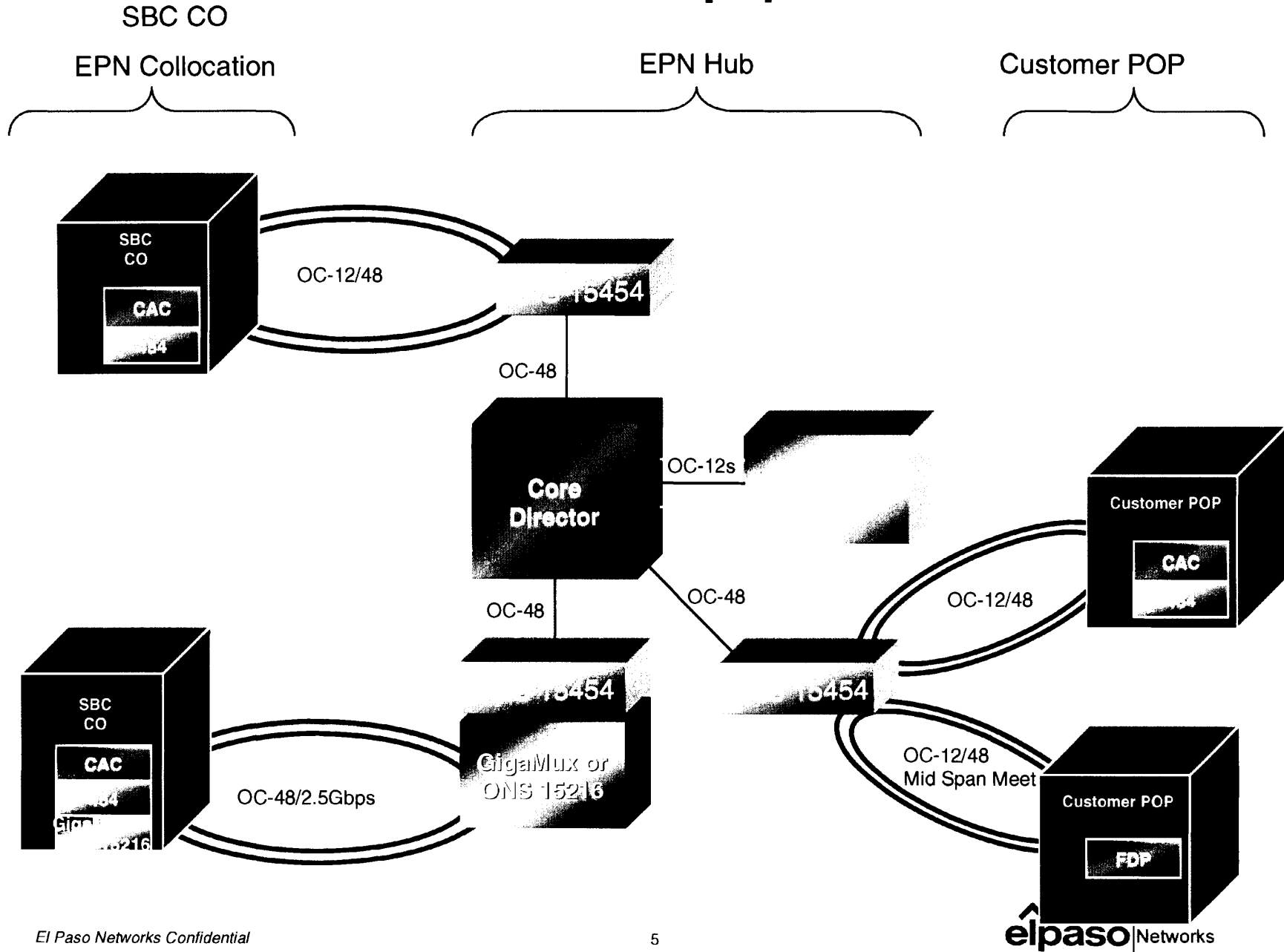
- ▲ El Paso Networks is a wholesale provider of bandwidth services
 - Headquartered in Houston with principal operations in the 5 major cities in Texas
 - Unprecedented competitive network coverage within our service areas
 - A cleanly designed, flexible network that only requires investment as we grow
 - EPN has an efficient overbuild sitting on top of a ratepayer financed legacy network that enables the transition from circuit switching to the packet based protocols of the future

EPN Architecture

Metro Fiber

- ⤴ EPN has acquired virtual and physical co-location space, enabling on-net coverage to over 90% of the Top 5 markets in Texas
- ⤴ EPN has placed our own state-of-the-art optronics and electronics in all of our central office co-locations
- ⤴ EPN has access to SBC inter-office dark fiber
- ⤴ EPN has deployed a unique network that parallels the SBC physical reach, but with an architecture that increases flexibility and lowers network cost
- ⤴ EPN has also deployed a Central Business “thick” fiber network to connect EPN to major POPs and Carrier Hotels
- ⤴ EPN has access to SBC dark fiber loops to customer premises

Network Architecture and Equipment



EPN's Metro Fiber Network Engineering Design Decision Matrix

- ^ Primary Option – Use Technology
Leverage high density technologies to achieve more bandwidth per fiber and avoid utilizing additional fiber.
- ^ Secondary Option – Purchase in place dark fiber from any carrier on an indefeasible right of use (IRU) basis.
- ^ Tertiary Option - EPN builds
Based on cost, timing and access, EPN will construct its own fiber facilities and connect to EPN's metro fiber ring or connect to dark fiber purchased on an (IRU).
- ^ Least Desirable Option - Lease SBC Dark fiber.
When limited by economics, time or access, EPN is forced to lease spare, unused fiber from SBC.
 - › SBC fiber is an expensive alternative. EPN pays over \$3.8 Million annually (\$36 / fiber mile / mo.) for SBC in dark fiber lease payments.
 - › Present value of \$36 / fiber mile / mo. equates to \$3,200 / fiber mile for a 20 year IRU. (Current market price for a 3rd party 20 year IRU is between \$1,000 - \$2,000 / fiber-mile.)
 - › EPN utilizes SBC dark fiber efficiently and is financially incented to return any unused dark fiber to avoid paying high SBC fiber lease charges.
 - › Because dark fiber is unbundled and unused by definition, rents to are 100% income to SBC.
 - › On our interoffice routes, an average of fifty eight percent (58%) of SBC fiber in the ground lays idle, even after deducting our leased fiber.

EPN Value Proposition

Flexibility

^ Service Flexibility

- A flexible, managed solution with scalable bandwidth that rivals or exceeds SBC as well as traditional competitive access providers

^ Metro Reach

- A solution that replicates the SBC network with higher flexibility and lower cost than SBC

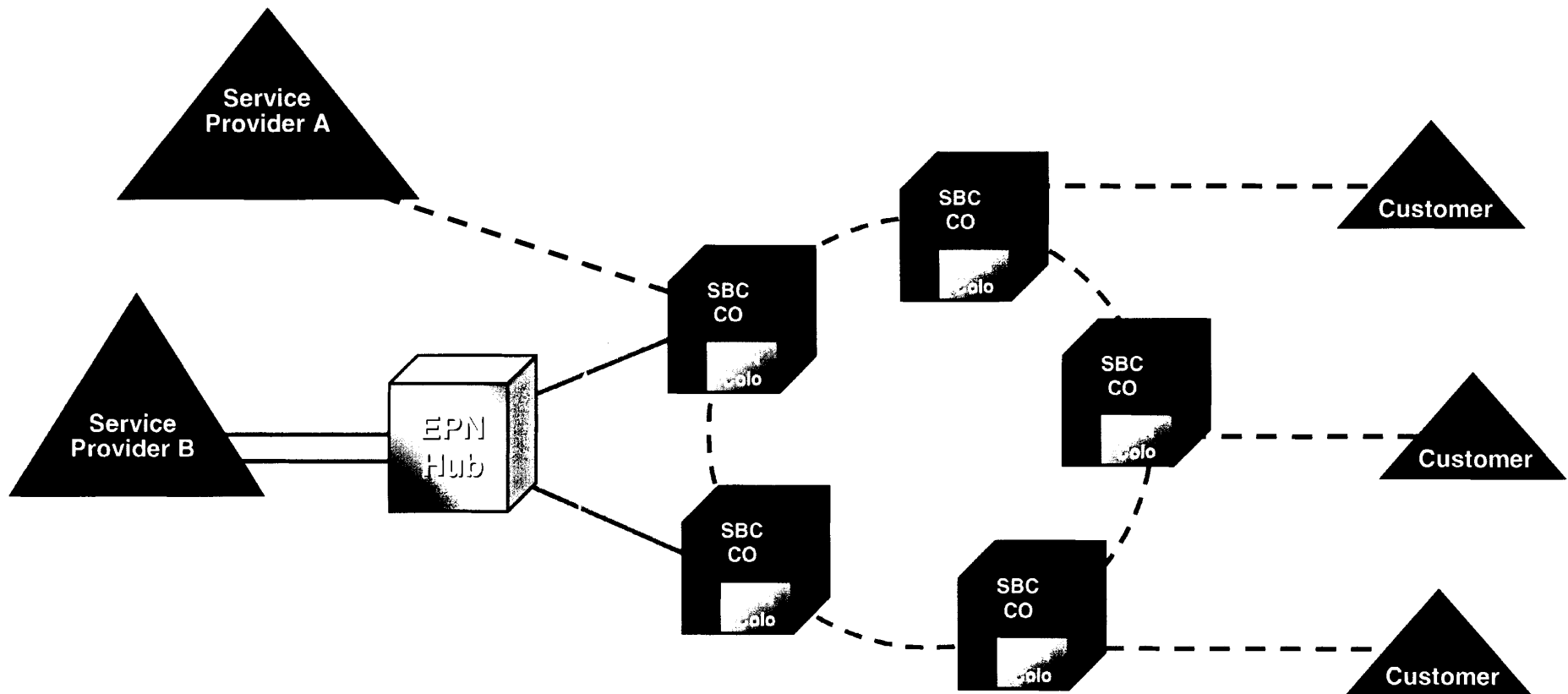
^ Service Simplicity

- One pipe, many possibilities: once connected to our hub, our customers have access to capacity throughout our network
- Deployed protocol independent transport is key to what customers need for growth in packet based technology

Providing Competitive Alternatives to our Texas Customers

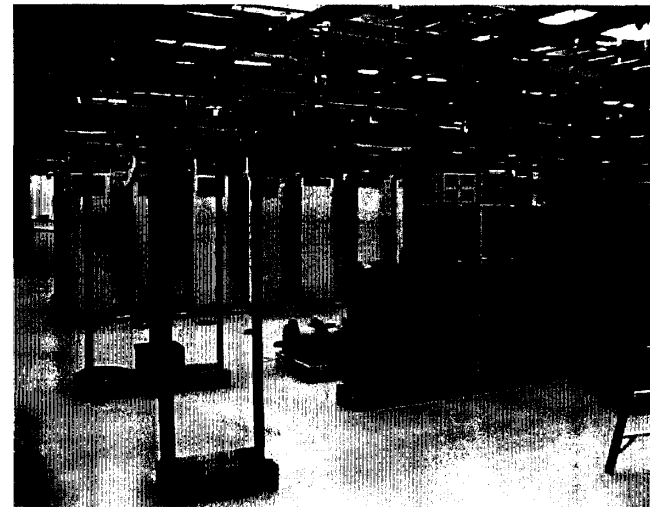
- ⤴ El Paso Corporation, prior to restructuring, had invested over \$300,000,000 in Texas to build our unique and ubiquitous network making EPN the only true transport competitor to SBC outside of the central business district.
- ⤴ EPN is a facilities-based company with equipment in 85% of SBC's central offices reaching 90% of the addressable market within the 5 major Texas metropolitan areas.
- ⤴ Our network enables telecom providers to get to their customers, ultimately giving Texas consumers an alternative to SBC for their voice and data needs.
- ⤴ EPN's business model: provide lit transport services by lighting dark fiber with its own optronics and electronics. EPN does not re-sell SBC's dark fiber.
- ⤴ EPN provides consumers a choice and promotes competition.

Connecting Texas Businesses to Their Customers



Global Networks Hub Facilities

- ^ Features ensure reliable service
 - Quality of design and construction
 - Security
 - 24/7 monitoring



TRO Dark Fiber Analysis Remains Valid

- ⤴ Dark fiber precisely addresses EPN's Impairment: It is impaired without access to transmission facilities but is not impaired without access to the electronics to activate those facilities. TRO ¶¶ 381, 383 n. 1177
- ⤴ Investment in electronics to activate dark fiber advances the goals of the Act in promoting facilities based competition. TRO ¶ 383
- ⤴ Substantial cost of deploying transport facilities is the sunk cost of deploying fiber. TRO ¶ 382
- ⤴ Dark fiber allows EPN to serve customers with the least reliance on the SBC's facilities. TRO ¶ 313

Dark Fiber Analysis (con't)

- ⤴ Presence of wholesale carriers using dark fiber to provide service to other carriers allows Commission to reduce unbundling of “lit” transport. See e.g. *TRO* ¶ 313
- ⤴ EPN uses fiber that would otherwise be left unused and avoids unnecessary digging of streets where duplicative facilities remain idle and available. *TRO* ¶ 383
- ⤴ Commission Voted 5-0 in favor of the Unbundling Regime for Dark Fiber
- ⤴ The Telecom Act, at the very least, mandates access to the most organic, unintelligent network element - - dark fiber.

ILEC Backsliding From Commitments

- ⤴ On June 9th ILEC CEOs committed to the FCC not to raise wholesale rates.
- ⤴ SBC, Verizon and Qwest now contend their “commitments” do not apply to dark fiber.
- ⤴ The 1996 Telecom Act is still the law of the land.
- ⤴ SBC June 23rd letter to Texas CLECs:

“SBC’s end-of-year commitment only applies to mass-market UNE-P, DS1 and DS3 loops dedicated to a single customer, and DS1 and DS3 transport between SBC’s central offices. The commitment does not apply to dark fiber of any kind.”
- ⤴ Commitments from SBC only help the non-facilities based carriers. Those CLECs who did deploy facilities are left without assurances.
- ⤴ Dark fiber is not available under Special Access Tariffs.
- ⤴ SBC refuses to address how it’s 271 obligation for dark fiber will be met.

Interim Rules Are Necessary

- ⤴ Issue the Stabilization Order Requested in the CompTel Emergency Motion
- ⤴ EPN Supports the Call of Acting NTIA Administrator Gallagher for no wholesale rate increases for one year for all UNEs
- ⤴ The Commission must act to avoid rate increases resulting from Bell Company efforts to disconnect carriers from their existing dark fiber UNEs



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Thank You